

House Bill 986

By: Representative O'Neal of the 146th

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to the administration of revenue and taxation, so as to provide for notification, attachment, and seizure of funds held by financial institutions; to provide for definitions, procedures, conditions, and limitations; to provide for powers, duties, and authority of the state revenue commissioner and the Department of Revenue; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to the administration of revenue and taxation, is amended by adding a new Code section to read as follows:

"48-2-63.

(a) As used in this Code section, the term:

(1)(A) 'Account' means:

(i) Any funds from a demand deposit account, checking account, negotiable order of withdrawal account, savings account, time deposit account, money market mutual fund account, or certificate of deposit account; and

(ii) Any funds or property held by a financial institution.

(B) 'Account' shall not include:

(i) An account or portion of an account to which an obligor does not have access due to the pledge of the funds as security for a loan or other obligation;

(ii) Funds or property deposited to an account after the time that the financial institution initially attaches the account;

(iii) An account or portion of an account to which the financial institution has a present right to exercise a right of setoff;

(iv) An account or portion of an account that has an account holder of interest named as an owner on the account; or

(v) An account or portion of an account to which the obligor does not have an unconditional right of access.

(2) 'Account holder of interest' means any person, other than the obligor, who asserts an ownership interest in an account.

(3) 'Obligor' means a person whose property is subject to a state tax lien.

(b)(1) The commissioner may request not more than four times a year from a financial institution, or as otherwise agreed to by the financial institution, the information set forth in paragraph (2) of subsection (c) of this Code section concerning any obligor who is delinquent in the payment of taxes.

(2) A request for information by the commissioner under paragraph (1) of this subsection shall:

(A) Contain the full name of the obligor and any other names known to be used by the obligor and the social security number, federal employer identification number, or other taxpayer identification number of the obligor; and

(B) Be transmitted to the financial institution in an electronic format.

(c)(1) Within 30 days after a financial institution receives a request for information under subsection (b) of this Code section, or as otherwise agreed to by the financial institution, the financial institution may, with respect to each obligor whose name the commissioner submitted to the financial institution, submit a report to the commissioner.

(2)(A) Except as provided in subparagraph (B) of this paragraph, the report described in paragraph (1) of this subsection shall contain, to the extent reflected in the records of the financial institution:

(i) The full name of the obligor;

(ii) The address of the obligor;

(iii) The social security number, federal employer identification number, or other taxpayer identification number of the obligor;

(iv) Any other identifying information needed to ensure positive identification of the obligor; and

(v) For each account of the obligor, the obligor's account number and balance.

(B) For a financial institution that submits reports through the federal parent locator service under 42 U.S.C. Section 666(a)(17), the report described in paragraph (1) of this subsection may contain information that meets the specifications required for financial data match reports under the federal parent locator service.

(3) A report submitted under paragraph (1) of this subsection shall be provided to the commissioner in machine readable form.

(4) The commissioner shall pay the financial institution a reasonable fee, not to exceed the actual costs incurred by the financial institution, to comply with the requirements of this Code section.

(5) The commissioner may institute civil proceedings to enforce this Code section.

(d) A financial institution that complies with a request from the commissioner by submitting a report to the commissioner in accordance with subsection (c) of this Code section shall not be liable under state law to any person for any:

(1) Disclosure of information to the commissioner under this Code section; or

(2) Other action taken in good faith to comply with the requirements of this Code section.

(e) A financial institution furnishing a report to the commissioner under this Code section shall be prohibited from disclosing to an obligor that the name of that obligor has been received from or furnished to the commissioner. A violation of this subsection shall result in the imposition of a civil penalty of \$1,000.00 for each instance of unauthorized disclosure by a financial institution.

(f)(1)(A) The commissioner may send notice of a tax lien to any financial institution that the commissioner reasonably believes holds property subject to a tax lien.

(B) The notice to be sent under this paragraph shall be provided by:

(i) First-class mail, under the postmark of the United States Postal Service, at the address designated for this purpose by the financial institution or, if no address has been designated, to the principal office of the financial institution;

(ii) An electronic format agreed on by the commissioner and the financial institution;
or

(iii) Any other reasonable manner as agreed on by the commissioner and the financial institution.

(2) The notice to be sent by the commissioner to a financial institution under paragraph (1) of this subsection shall contain:

(A) The name of the obligor;

(B) The amount of the tax lien;

(C) The last known address of the obligor;

(D) The social security number, federal employer identification number, or other taxpayer identification number of the obligor; and

(E) A notice to immediately seize and attach from one or more accounts held by the financial institution in the name of the obligor an aggregate amount equal to the lesser of the amounts in all accounts or the amount of the tax lien.

(g)(1) On receipt of the notice described in subsection (f) of this Code section, the financial institution promptly shall seize and attach from one or more of the accounts of the obligor held by the financial institution an aggregate amount equal to the lesser of:

(A) The total of the amounts in all the accounts of the obligor held by the financial institution; or

(B) The amount stated in the notice sent under subsection (f) of this Code section.

(2) Within 15 days after the financial institution receives the notice directing it to seize and attach accounts of the obligor, the financial institution shall send notice to the commissioner, in the manner specified in subsection (f) of this Code section, specifying the aggregate amount held under this subsection.

(3)(A) The financial institution may assess a fee against the accounts of the obligor in addition to the amount identified in the notice under subsection (f) of this Code section.

(B) In the case of insufficient funds to cover both the fee and the amount identified in the notice under subsection (f) of this Code section, the financial institution may first deduct and retain the fee from the amount seized and attached as provided in this Code section.

(4) The financial institution shall not be held liable to any person, including the commissioner, the obligor, or any account holder of interest, for wrongful dishonor or for any other claim relating to the seizure and attachment of an account or other actions taken in compliance with this Code section.

(h)(1) Within ten business days after the commissioner has received notice from the financial institution under paragraph (2) of subsection (g) of this Code section, the commissioner shall send a notice to the obligor, by regular mail, to the obligor's last known address.

(2) The notice shall contain the following information, to the extent known by the commissioner:

(A) The address of the commissioner;

(B) The telephone number, address, and name of a contact person at the office of the commissioner;

(C) The name and social security number, federal employer identification number, or other taxpayer identification number of the obligor;

(D) The address of the obligor;

(E) For each account of the obligor, the name of the financial institution that has seized and attached amounts as required by this Code section;

(F) The total amount of the tax lien owed by the obligor;

(G) The date the notice is being sent;

(H) A statement informing the obligor that the commissioner has directed the financial institution to seize and attach the amount of the tax lien owed by the obligor from one or more of the accounts of the obligor and, on subsequent notice by the commissioner, to forward the amount to the commissioner; and

(I) A statement informing the obligor that, unless a timely challenge is made by the obligor or an account holder of interest under subsection (k) of this Code section, the commissioner shall notify the financial institution to forward the amount seized and attached by the financial institution to the commissioner.

(3) The commissioner shall not be obligated to send the notice described in paragraphs (1) and (2) of this subsection if, prior to the time that the notice must be sent, the commissioner and the obligor agree to an arrangement under which the obligor shall pay amounts owed under the tax lien.

(i)(1) If a timely challenge is not made by the obligor or an account holder of interest under subsection (k) of this Code section, the commissioner shall send a notice to the financial institution, in the manner specified in subsection (f) of this Code section, directing the institution to:

(A) Forward the amount seized and attached by the financial institution to the commissioner;

(B) Reduce the amount seized and attached by the financial institution to a revised amount as stated, forward the revised amount to the commissioner, and release the excess amount; or

(C) Release the amount seized and attached by the financial institution.

(2) The commissioner may send the notice described in paragraph (1) of this subsection before the time for filing a timely challenge under subsection (k) of this Code section on agreement among the commissioner, the obligor, and, if the commissioner is aware of an account holder of interest, the account holder of interest.

(j) The commissioner shall apply the amount seized and forwarded by the financial institution to the obligor's tax lien obligation.

(k)(1) An obligor or an account holder of interest may challenge the actions of the commissioner under this Code section by filing a motion with the commissioner within ten days of the date of the notice sent under paragraph (1) of subsection (h) of this Code section.

(2) An obligor or an account holder of interest may challenge the actions of the commissioner based on:

(A) A mistake in the identity of the obligor;

(B) A mistake in the ownership of the account;

(C) A mistake in the contents of the account; or

(D) A mistake in the amount of the lien obligation due.

(3) An obligor or an account holder of interest shall not challenge the actions of the commissioner based on a mistake or error in the original tax assessment underlying the tax lien against the obligor.

(4) The commissioner's denial of an obligor or an account holder of interest's motion challenging the actions of the commissioner under this Code section shall not be a contested case under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

(1)(1) The commissioner may withdraw the notice to seize and attach accounts by sending notice to the financial institution, in the manner specified in subsection (f) of this Code section, directing the financial institution to release the attachment on the accounts.

(2) If a determination is made by the commissioner that the account or accounts of the obligor should not have been held, the commissioner shall notify the financial institution, in the manner specified in subsection (f) of this Code section, to release the amount seized and attached by the financial institution.

(3) If a determination is made by the commissioner, pursuant to a challenge under subsection (k) of this Code section, to reduce the amount seized and attached by the financial institution, the commissioner shall notify the financial institution, in the manner specified in subsection (f) of this Code section, to revise the amount as stated, forward the revised amount to the commissioner, and release the excess amount seized and attached by the financial institution.

(4)(A) If a challenge made under subsection (k) of this Code section is denied by the commissioner, the commissioner shall notify the financial institution, in the manner specified in subsection (f) of this Code section, to forward the amount seized and attached by the financial institution to the commissioner.

(B) A financial institution that complies with a notice from the commissioner sent under this Code section shall not be liable under state law to any person for:

(i) Any disclosure of information to the commissioner under this Code section;

(ii) Seizing and attaching any amounts from an account or sending any amount seized and attached by the financial institution to the commissioner; or

(iii) Any other action taken in good faith to comply with the requirements of this Code section.

(m) A financial institution shall have no obligation to reimburse fees assessed as a result of the commissioner instituting an action under this Code section or as otherwise permitted by law or authorized by contract.

(n) This Code section shall not be construed to prohibit the commissioner from collecting taxes due from the obligor in any other manner authorized by law."

207 **SECTION 2.**

208 This Act shall become effective upon its approval by the Governor or upon its becoming law
209 without such approval.

210 **SECTION 3.**

211 All laws and parts of laws in conflict with this Act are repealed.